

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARK MORRIS,

Plaintiff(s),

Case No. 2:20-CV-764 JCM (EJY)

ORDER

V.

GEICO INSURANCE AGENCY, INC.,

Defendant(s).

Presently before the court is plaintiff Mark Morris's ("Morris") motion to remand to state court. (ECF No. 7). Defendant GEICO Casualty Company ("GEICO") filed a response. (ECF No. 10). Morris did not reply, and the time to do so has passed.

I. Background

This action arises from Morris's automobile insurance claim against his insurer, GEICO. (ECF No. 1-1). Morris alleges that in October 2018, he was injured in a motor vehicular collision on the public streets of Clark County, Nevada, because of the negligence of an underinsured driver who crashed into Morris's vehicle causing damages in excess of \$2,782.17. *Id.* at 3. As a result of the collision, Morris alleges he suffered serious bodily injuries causing him to incur medical bills exceeding \$60,277.46. *Id.* The driver of the vehicle that struck Morris accepted liability and tendered his \$25,000 policy limit. *Id.*

Morris further alleges that at the time of the collision, he had an automobile insurance policy with GEICO, which provided underinsured motorist (“UIM”) insurance coverage up to \$50,000. *Id.* Because the driver was underinsured, Morris made a claim for UIM benefits. *Id.* at 4. After conducting an evaluation of Morris’s medical bills, GEICO offered him \$15,408.46 “from [Morris’s] paid for policy of underinsurance coverage. *Id.*

1 On March 30, 2020, Morris initiated this action in state court, alleging five causes of
 2 action: (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing,
 3 tortious breach of the implied covenant of good faith and fair dealing, (4) bad faith, and (5)
 4 unfair trade practices. *Id.* at 5–9.

5 On April 28, 2020, GEICO removed this action to federal court asserting diversity
 6 jurisdiction. (ECF No. 1). Now, Morris moves to remand this case to state court. (ECF No. 7).

7 **II. Legal Standard**

8 Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the
 9 district courts of the United States have original jurisdiction, may be removed by the defendant
 10 or the defendants, to the district court of the United States for the district and division embracing
 11 the place where such action is pending.” 28 U.S.C. § 1441(a). “A federal court is presumed to
 12 lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*
 13 *v. Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

14 Upon notice of removability, a defendant has thirty days to remove a case to federal court
 15 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*
 16 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not
 17 charged with notice of removability “until they’ve received a paper that gives them enough
 18 information to remove.” *Id.* at 1251.

19 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §
 20 1447(c). On a motion to remand, the removing defendant faces a strong presumption against
 21 removal, and bears the burden of establishing that removal is proper. *Sanchez v. Monumental*
 22 *Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67
 23 (9th Cir. 1992).

24 **III. Discussion**

25 For a United States district court to have diversity jurisdiction under 28 U.S.C. § 1332,
 26 the parties must be completely diverse and the amount in controversy must exceed \$75,000.00,
 27 exclusive of interest and costs. *See* 28 U.S.C. § 1332(a); *Matheson v. Progressive Specialty Ins.*
 28 *Co.*, 319 F.3d 1098 (9th Cir. 2003). “In determining the amount in controversy, courts first look

1 to the complaint. Generally, ‘the sum claimed by the plaintiff controls if the claim is apparently
 2 made in good faith.’” *Ibarra v. Manheim Invests., Inc.* 775 F.3d 1193, 1197 (9th Cir. 2015)
 3 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

4 Here, the parties do not dispute that removal was timely. Further, the parties do not
 5 dispute that there is complete diversity of citizenship. Morris is a Nevada resident. (ECF No.
 6 1-1 at 2). GEICO is incorporated and headquartered in Maryland. (ECF No. 1 at 2). Thus, the
 7 only issue before the court is the amount in controversy.

8 District courts may also consider the amount of compensatory and punitive damages
 9 recoverable based on the plaintiff’s complaint as well as attorneys’ fees. *Guglielmino v. McKee*
 10 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (“Section 1332(a)’s amount-in-controversy
 11 requirement excludes only ‘interest and costs’ and therefore includes attorneys’ fees.”); *see also*
 12 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *Dawson v. Richmond Am. Homes*
 13 *of Nevada, Inc.*, 2:12-CV-01563-MMD, 2013 WL 1405338 (D. Nev. Apr. 5, 2013). This
 14 remains true even if the amount of such damages is initially unascertainable. *Hill v. Blind Indus.*
 15 & *Servs. of Maryland*, 179 F.3d 754, 757 (9th Cir. 1999) (explaining that if the pleadings
 16 sufficiently invoke diversity jurisdiction, a district court is not divested of jurisdiction if the
 17 “amount in controversy subsequently drops below the minimum jurisdictional level.”); *see also*
 18 *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 289–90 (1938) (“Events occurring
 19 subsequent to the institution of suit which reduce the amount recoverable below the statutory
 20 limit do not oust jurisdiction.”).

21 In his complaint, Morris states he seeks general damages “in an amount in excess of
 22 \$15,000.00, but less than \$75,000.00.” (ECF No. 1-1 at 9). Although he has not explicitly
 23 conceded that he seeks damages in excess of \$75,000, Morris also seeks to recover special
 24 damages for “medical and miscellaneous expenses as of this date, plus future medical expenses
 25 and the miscellaneous expenses incidental thereto . . . ,” lost wages and/or diminution of the
 26 earning capacity, possible future loss of earnings, punitive damages, and attorney’s fees. *Id.* at
 27 9–10. According to Morris, his past medical damages amounted to \$60,277.46 (ECF No. 1-1 at
 28 3), and he expects future medical expenses related to this action to total \$24,522 (ECF No. 1-4 at

1 2). Morris failed to include these past and future medical expenses when he seeks
2 damages in an amount “less than \$75,000” (ECF No. 1-1 at 9).

3 Morris also did not consider the potential punitive damages that may be recoverable in
4 this suit because, by his estimation, “the mere possibility of a punitive damage award is not
5 sufficient to prove that the amount in controversy has been met.” (ECF No. 7 at 6). However,
6 “[i]t is well established that punitive damages are part of the amount in controversy in a civil
7 action.” *Gibson*, 261 F.3d at 945. Further, Nevada state law authorizes an award of punitive
8 damages against an insurer “who acts in bad faith regarding its obligations to provide insurance
9 coverage.” NRS 42.005(2)(b). This is especially relevant here because Morris alleges that
10 GEICO acted in bad faith in handling his insurance claim by, *inter alia*, delaying payment,
11 offering less than the claim is worth, and trying to mislead the policyholder about what the
12 policy covers. (ECF No. 1-1 at 7–8).

13 If Morris intended to disclaim any recovery in excess of \$75,000, remand is appropriate.
14 But Morris did not clearly do so. Accordingly, in light of Morris’s prayer for attorney’s fees,
15 damages for past and future medical expenses, and punitive damages, it is more likely than not
16 that the amount in controversy in this action exceeds \$75,000. The court denies Morris’s motion.

17 **IV. Conclusion**

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff’s motion to
20 remand to state court (ECF No. 7) be, and the same hereby is, DENIED without prejudice.

21 IT IS FURTHER ORDERED that plaintiff may file, within 14 days of this order, a notice
22 with the court disclaiming any recovery in excess of \$75,000. If plaintiff files such a notice, the
23 court will remand this action.

24 DATED July 10, 2020.

25 
26 UNITED STATES DISTRICT JUDGE
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